

1 Roberta S. Savage (SBN 202940)
2 221 G Street, Suite 207
3 Davis, CA 95616
4 tel (530) 753-4497
5 fax (530) 753-4498
6

7 Attorney for
8 A.B.

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 A.B., a minor, By and Through
12 W.F.B., His Guardian Ad Litem,

13 Plaintiff,

14 v.

15 SAN FRANCISCO UNIFIED
16 SCHOOL DISTRICT,
17 Defendant.
18
19
20
21
22
23
24
25
26
27
28

CASE NO. 07-4738 PJH

PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF

Date: June 25, 2008
Time: 9:00 a.m.
Ctvm: 3

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATEMENT OF FACTS AND PROCEDURAL HISTORY	2
A.	Development of AB's IEP in Second through Fifth Grades	2
1.	SFUSD Developed the Second Grade IEP in 2003; Mom's Input Ignored; AB's Behavior Declines	2
2.	SFUSD Conducted an Incomplete and Faulty Triennial IEP in Third Grade, Continuing to Ignore AB's Mother	4
3.	SFUSD's IEPs for Fourth and Fifth Grades Were Similarly Flawed	4
B.	AB's Mother Filed For a Due Process Hearing, Requesting Reimbursement for Services She Paid for Because of SFUSD's Repeated Failure to Provide a FAPE	5
C.	The ALJ Found a Myriad of Procedural Violations, but Stopped Short of Finding a Pervasive Denial of FAPE	5
III.	LEGAL ANALYSIS	6
A.	Standard of Review	6
1.	Summary Judgment is the Proper Vehicle for Resolving this Matter	6
a.	A Modified De Novo Standard of Review Applies to IDEA Claims	7
2.	The ALJ Decision is Jumbled, Incomplete, and Often Unsupported	7
3.	Procedural Violations Related to AB's Second Grade IEP do not Fall Outside of the Statute of Limitations	8
4.	The ALJ Misapplied the Harmless Error Standard	9
5.	AB's Mother was Denied Meaningful Participation	10
6.	AB Lost Educational Opportunity/Benefits	11
B.	Under the IDEA, a District Must Provide a Free Appropriate Public Education	12
1.	Procedural Requirements for a FAPE	13
C.	SFUSD Denied AB a FAPE by Failing to Provide Prior Written Notice for Its Refusals to Initiate Assessments, Changes in Placement, and Make Changes in Response to His Mother's Requests	14

//

1	D.	SFUSD Denied AB a FAPE by Failing to Make a Clear Offer of Placement for Services During the Extended School Year (ESY) and not providing Prior Written Notice (PWN)	15
2			
3	E.	SFUSD Denied AB a FAPE by Failing to Assess AB's Educational Needs	17
4	1.	SFUSD is Required to Assess AB in All Areas of Suspected Disability	17
5	2.	SFUSD Failed to Properly Assess AB	18
6	a.	SFUSD Failed to Conduct a Functional Behavioral Assessment (FBA) as Required	18
7	b.	SFUSD Failed to Conduct Neuropsychological or Psycho-educational Assessments as Required	19
8	c.	SFUSD Failed to Conduct Speech, Language and Social Skills Assessments as Required	20
9	d.	SFUSD Failed to Conduct Occupational Therapy (OT)/Sensory-Motor Skills Assessments as Required	21
10	e.	SFUSD Failed to Conduct Auditory Processing Assessments as Required	21
11			
12	F.	SFUSD Denied AB a FAPE by Failing to Develop Appropriate Goals	22
13	1.	SFUSD is Required to Develop Appropriate Goals Under the IDEA, and could not do So Because It did not Properly Assess AB	22
14	2.	SFUSD Failed to Develop Appropriate Baselines and Goals for AB in Second through Fifth Grade	23
15			
16	G.	SFUSD Denied AB a FAPE by Failing to Provide Appropriate Programs	26
17	1.	SFUSD is Required to Provide Appropriate Programs Under the IDEA, and could not do So Because It did not Properly Assess AB or Develop Appropriate Goals for Him	26
18	2.	SFUSD Failed to Provide Appropriate Programs for AB in Second through Fifth Grade	26
19			
20	H.	AB's Mother is Entitled to Reimbursement for the Expenses Incurred for Placements and Services She Procured Because of SFUSD's Failure to Provide a FAPE to AB	27
21	1.	AB's Mother is Entitled to Reimbursement for Summer Quest Camp and other ESY Services	28
22	2.	AB's Mother is Entitled to Reimbursement for Supplemental Services During the School Year	29
23			
24			
25			
26			
27			
28	IV.	CONCLUSION	29

TABLE OF AUTHORITIES

CASES

<i>Amanda J. v. Clark County Sch. Dist.</i> , 267 F.3d 877, 892 (9 th Cir. 2001)	9-12, 17, 18, 28
<i>Bend-Lapine Sch. District v. K.H.</i> , 43 Indiv. Disab. Educ. L. Rptr. 191 (D.C. Ore. 2005) . .	22-26
<i>Burlington Northern Inc. v. Weyerhaeuser Co.</i> , 719 F.2d. 304, 307 (9 th Cir. 1983)	7
<i>Capistrano Unified Sch. Dist. v. Wartenberg</i> , 59 F.3d 884 (9 th Cir. 1995)	7
<i>Florence County Sch. Dist. Four v. Carter</i> 510 U.S. 7, 13-14 (1993)	27
<i>Gregory K. v. Longview School Dist.</i> , 811 F.2d 1307, 1310 (9 th Cir. 1987)	7
<i>Hendrick Hudson Dist. Bd. of Educ. v. Rowley</i> , 458 U.S. 176 (1982)	7, 12-13, 26
<i>Kirby v. Cabell Cty Bd. Of Educ.</i> , 46 Indiv. Disab. Educ. L. Rptr 156 (S.D. W.Va 2006)	22
<i>McDermott Int'l, Inc. v. Wilander</i> , 498 U.S. 337, 111 S.Ct. 807, 818 (1991)	7
<i>Ojai Unified School Dist. v. Jackson</i> , 4 F.3d 1467 (9 th Cir. 1993)	7
<i>Prinzi v. Keydrill Co.</i> , 738 F.2d 707 (5 th Cir. 1984)	7
<i>School Committee of Burlington v. Department of Educ.</i> (1996) 471 U.S. 359, 369-71	27
<i>Student W. v. Puyallup Sch. Dist.</i> , 31 F.3d 1489, 1496 (9 th Cir. 1994)	27
<i>Transworld Airlines, Inc. v. American Coupon Exchange, Inc.</i> , 913 F2d 676, 684 (9 th Cir. 1990)	6
<i>Union Sch. Dist. v. Smith</i> , 15 F.3d 1519, 1526 (9 th Cir. 1994)	13, 15

FEDERAL STATUTES

20 U.S.C. § 1400	1, 7
20 U.S.C. § 1400(c)(5)(B)	10
20 U.S.C. § 1412(a)(10)(C)	27
20 U.S.C. § 1412(a)(10)(C)(iii)	27, 28
20 U.S.C. § 1414(a)(2)(3)	17
20 U.S.C. § 1414(d)(1)(A)(i)	13, 22
20 U.S.C. § 1414(d)(3)(B)(i)	18
20 U.S.C. § 1415 (b)	11
20 U.S.C. § 1415 (b)(1)(A)	10

1	20 U.S.C. § 1415(b)(3)	14
2	20 U.S.C. § 1415 (c)(1)	16
3	20 U.S.C. § 1415(f)(3)(E)	9
4	20 U.S.C. § 1415(i)(2)(C)(3)	27
5	20 U.S.C. §1415(k)(1)(D) &(F)	18

FEDERAL REGULATIONS

7	34 C.F.R. § 300.34(a)	13
8	34 C.F.R. § 300.148(d)	27, 28
9	34 C.F.R. § 300.346(a)(2)(i)	18
10	34 C.F.R. § 300.347(a)	13, 22
11	34 C.F.R. § 300.403(d)	27, 28
12	34 C.F.R. § 300.502	17
13	34 C.F.R. § 300.503	14
14	34 C.F.R. § 300.520(b)	18

FEDERAL RULES

17	Fed.R.Civ.P. 56(c)	7
----	--------------------------	---

CALIFORNIA CODES

20	Cal. Educ. Code § 48915.5	18
21	Cal Educ. Code § 56176	27, 28
22	Cal. Educ. Code § 56320(e)	17
23	Cal. Educ. Code § 56320(f)	17
24	Cal. Educ. Code § 56321(a)	17
25	Cal. Educ. Code §56329(b)	17
26	Cal. Educ. Code § 56341.1(b)(1)	18
27	Cal. Educ. Code § 54345	22
28	Cal. Educ. Code § 56345(b)(3)	15

1	Cal. Educ. Code § 56381(a)	16, 17
2	Cal. Educ. Code § 56464(a)	13
3	Cal. Educ. Code, § 56500.4.	14
4	Cal. Educ. Code § 56505(l)	8

CALIFORNIA REGULATIONS

6	Cal. Code Regs. §5.3001	12, 18
7	Cal. Code Regs §5.3025	12, 18
8	Cal. Code. Regs. § 5.3043.	15

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff AB, a student in the San Francisco Unified School District (“SFUSD”), submits this memorandum in support of his motion for summary judgment.

I. INTRODUCTION

AB is a child eligible for special education as autistic-like. From second grade on, AB’s mother requested assessments be done, suggested educational goals and alternate programs as part of the “Individualized Education Plan” (“IEP”) process. While nominally she was a part of her son’s IEP process, in reality she was denied meaningful participation. SFUSD failed repeatedly to properly assess, set goals and provide programs for AB. Cumulatively, SFUSD’s pattern of ignoring AB’s mother and failing to meet its obligations to AB rises to a pervasive denial of a free appropriate public education (“FAPE”) under the Individuals with Disabilities Education Improvement Act (“IDEA”) 20 U.S.C. § 1400 *et seq.*

Proper assessment and parental involvement are the cornerstones of the IEP process. Without a proper assessment, it is impossible for a school district to provide a FAPE, because the child’s particular needs are unknown. It is impossible to know the child’s starting point, or to measure his improvement. Without meaningful parental involvement, those who know the child best are shut out of important decisions that can make or break a child’s future independence.

SFUSD failed time and again to properly assess AB cognitively, behaviorally, communicatively, and more. These assessments are common, appropriate and essential for children with autism. Without proper behavioral, sensory-motor, speech and neurological assessments, the IEP team could not know AB’s baseline levels, deficits or strengths any given year. Without a baseline, the IEP team could not measure improvement and could not set appropriate goals for AB. The natural consequence of the failure to assess was SFUSD’s failure to provide AB with a FAPE.

AB’s mother tried to focus SFUSD’s attention on her child’s educational needs. She went to IEP meetings. She constantly tried to communicate with SFUSD. She requested assessments, suggested goals, suggested programs. Simply put, SFUSD ignored her efforts. Often her written suggestions were stapled to the back of an IEP report, but clearly no one gave them due

1 consideration. AB's mother privately obtained assessments and services to supplement his program.

2 The fact that SFUSD failed to properly assess AB is not in dispute. The ALJ agreed that
 3 SFUSD did not conduct certain assessments that it should have. The ALJ agreed that some
 4 assessments were done improperly. Despite finding years' worth of faulty or missing assessments,¹
 5 however, the ALJ stopped short of finding any significant denial of FAPE. The ALJ evaluated each
 6 of SFUSD's violations individually, finding many to be harmless. In many instances, she found that
 7 AB was not denied any educational opportunity. The ALJ failed to consider whether AB's mother
 8 was denied meaningful participation in the process or the effect of the cumulative violations.
 9 Plaintiff brings this motion because looking at SFUSD's pervasive failure to assess AB, in addition
 10 to SFUSD's failure to provide AB's mother with the opportunity to meaningfully participate in the
 11 IEP process, gives rise to a pervasive denial of FAPE that is still causing harm to AB to this day.

12 The ALJ's failure to examine the whole picture – years of SFUSD's continual failure to
 13 assess AB, SFUSD's resulting inability to craft appropriate goals and programs, and SFUSD shutting
 14 out AB's mother from the IEP process, renders her decision flawed. Accordingly, Plaintiff requests
 15 that the Court find that SFUSD denied him a FAPE from second through fifth grade and that
 16 appropriate relief be ordered in the form of reimbursement for private services.

17 II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

18 A. *Development of AB's IEP in Second through Fifth Grades*

19 Eligible as "Autistic-like," AB has received special education and related services since
 20 preschool. 2389.² During all regular school years, AB resided within the jurisdictional boundaries
 21 of SFUSD and attended Alamo Elementary School, a public elementary school. 2389.

22 1. **SFUSD Developed the Second Grade IEP in 2003; Mom's Input Ignored; 23 AB's Behavior Declines**³

24 SFUSD held an IEP meeting on March 26, 2003 to prepare for AB's second grade year.
 25 3351-65. AB's second grade IEP provided vague goals that were purportedly designed to address

26 ¹ Attached to this brief as Appendix A is a summary chart of the ALJ's findings.

27 ² The Administrative Record has been consecutively page numbered for ease of reference. This is
 a 5 digit numbering at the bottom corner of each page. AB will cite only to the specific page
 number, unless citation to a particular paragraph of the Decision or transcript line is necessary.

28 ³ A breakdown of each grade by year is included at 3132.

1 his need to work on independent work skills, social interaction and communication. 3354-58. His
2 IEP also identified a limited special education program of services including, *inter alia*, a vague
3 promise of an integrated playgroup “as school district funding and staffing permit.” 3364. The
4 speech and language services offered were identified as “Direct/consult/push-in/pull-out” for 90
5 minutes each week. 3359. Extended School Year (“ESY”) services were not defined. 3359.

6 AB’s mother tried to contribute to this vague and incomplete IEP her list of concerns,
7 including his difficulties with peer interactions, focusing in class, and refusal to work. 2785-90.
8 However, SFUSD’s IEP was not modified in response to this input. *Compare* 3351-65 with 2785-90.

9 AB’s behavior worsened significantly during second grade. By the end of the year his
10 classroom teacher reported that “[t]here has not been a day since December that he has not caused
11 at least one major disruption during class.” 3568. Concerned with AB’s behavioral slide, AB’s
12 mother requested a functional analysis assessment in January 2005. 2395 ¶25. AB’s mother
13 contacted his teachers and suggested possible interventions. 2794-97, 2803-16, 2820-21. Rather than
14 assess his behaviors, SFUSD recommended that AB enroll in a special day class, not a regular
15 education class, for third grade. 3341, 3344, 3568.

16 AB’s mother supplemented SFUSD’s services with after school privately funded programs,
17 specifically music therapy and speech and language therapy.⁴ She privately obtained a
18 neuropsychological assessment by Vincent Nunno, Ph.D., in part to address SFUSD’s stated
19 intention to enroll AB in a special day class for third grade. 3126, 3129, 3425-35. Dr. Nunno
20 recommended that AB remain in a general education class with a trained aide, participate in an
21 occupational therapy program, and receive daily speech and language therapy. 3434-35. AB’s
22 mother provided this report to SFUSD in June 2004, as it was unavailable at the May 2004 IEP.
23 3126, 3129. Dr. Nunno’s report was thereafter not reviewed by an IEP team, nor was it translated
24 at that time into educational recommendations.⁵ 2398-99; 1937:23-1938:9; 1147:24- 1148:3.

25 ⁴ A complete breakdown of all costs, which includes dates of services for music therapy, speech
26 and language therapy, social skills program, Interactive Metronome therapy is found at 2975-83.

27 ⁵ The ALJ found that such a translation happened, but there is no support in the record for this
28 finding. Although Dr. Mills’ job at SFUSD included translating outside assessments into
educational terms for IEP teams, Dr. Mills actually testified that the first time she recalled
reviewing Dr. Nunno’s assessment was in preparation for the hearing and that she had never

1 For the 2004 ESY, AB's mother provided proper notice and privately placed him in Quest
2 Therapeutic Camps ("Quest") and other supplemental services, for which she requested
3 reimbursement from SFUSD. 2824. SFUSD never responded to her request for reimbursement.

4 **2. SFUSD Conducted an Incomplete and Faulty Triennial IEP in Third**
5 **Grade, Continuing to Ignore AB's Mother**

6 By all accounts, AB's behavior improved by the time he returned to Alamo in the Fall 2004.
7 Nonetheless, he still required a full time aide, and needed time out of the classroom. 1161:6-17;
8 2422 ¶ 145. Ms. Blood-Walker reported that during third grade AB engaged in "tantrums, cries, lays
9 on ground" due to his inability to cope, as well as, sleeping in class, becoming defiant and ignoring
10 directions, and a "low tolerance for frustration." 3387. It is difficult to compare AB's daily
11 inappropriate behaviors between second and third grade because the written plans are inconsistent
12 in defining the behaviors and no functional analysis assessment was completed. 3307, 3323.

13 AB's mother provided SFUSD with various information about the services AB received
14 which she believed benefitted AB. 2827-31, 3206-24. AB's mother continued supplementing his
15 program with a social skills program, music therapy, Quest and speech and language therapy. 2975-
16 83. She requested further assessments at the end of the year. 3199-200, 3279. There is no evidence
17 in the record that any of her input was ever considered seriously.

18 The only offer of placement for summer 2005 ESY program was a nonspecific special day
19 class at Lafayette Elementary School. 3271. At the hearing, the SFUSD staff could not identify any
20 more specific details of the program. 1169:7- 1170:23. AB's mother gave notice that she was again
21 placing AB in Quest with additional services for the 2005 summer. 3203.

22 **3. SFUSD's IEPs for Fourth and Fifth Grades Were Similarly Flawed**

23 In preparation for AB's fourth grade year, SFUSD conducted AB's triennial assessment
24 including several IEP meetings in the Spring of 2005. 3270-318. As with the prior years, AB's
25 mother presented her input to the team. 3311-18. She again identified as concerns AB's problems
26 with peer interactions and following directions. 3312. While SFUSD conducted speech and language
27 and occupational therapy evaluations, the ALJ found them flawed. 2443 ¶¶ 31, 32; 3415-20, 3436-39.

28 attended an IEP for AB. 1874:25- 1876:16; 1937:23-1938:9.

1 In addition to having incomplete or missing assessments, AB's fourth grade IEP included
 2 vague, unmeasurable baselines and goals. 3285-90. The IEP did not include occupational therapy,
 3 or daily speech and language therapy as recommended by Dr. Nunno. 3270-318, 3435.

4 AB's mother requested a neuropsychological evaluation in May 2005. 2990-93. In June
 5 2005, SFUSD agreed to conduct a behavior and psycho-educational assessment. 3199-200. AB's
 6 mother privately contracted with Tina Guterman, Ph.D. to assess AB in 2005, but did not present the
 7 assessment to SFUSD until the due process hearing. 2869-91, 3088-92.⁶

8 SFUSD conducted the behavior assessment in Fall 2005. This assessment was determined
 9 to be untimely and inappropriate. 2444 ¶34. The psycho-educational assessment was never
 10 conducted. 2442-43 ¶28.

11 The same problems that existed in the prior years' IEPs existed for the fifth grade IEP. The
 12 assessments forming the baseline for the IEP were either non-existent or improper. The goals and
 13 baselines were vague and ambiguous as written. The services offered were incomplete and improper.
 14 The District again offered a special day class to AB for the 2006 summer and his mother again gave
 15 notice of private services. 2900-01, 3258.

16 Because AB's IEP process was flawed throughout, and AB's mother's input was largely
 17 ignored throughout, she had little choice but to file for a due process hearing on October 6, 2006.

18 B. *AB's Mother Filed For a Due Process Hearing, Requesting Reimbursement for*
 19 *Services She Paid for Because of SFUSD's Repeated Failure to Provide a FAPE*

20 AB's mother filed for a due process hearing, requesting reimbursement for all of the services
 21 she provided to AB in the second through fifth grade, approximately \$137,000. 2647, 2710-14. The
 22 second amended complaint was filed on November 6, 2006, and included challenges to SFUSD's
 23 assessments, goals, services, program, ESY offer, and failure to provide prior written notice during
 24 the same period. 2633-47.

25 C. *The ALJ Found a Myriad of Procedural Violations, but Stopped Short of Finding a*
 26 *Pervasive Denial of FAPE*

27 The ALJ found for Plaintiff on many issues and found for SFUSD on others. Appendix A

28 ⁶In June 2005, SFUSD was aware of Dr. Guterman's involvement because she attempted an
 observation of AB at Alamo. 2870, 3199-200.

summarizes her decision – what Plaintiff requested, when she found a denial of FAPE, and when she awarded damages or found harmless errors. The ALJ found in the second and third grades that SFUSD failed to adequately assess AB’s behavioral needs. 2442 ¶ 25-26; 2444 ¶ 35; 2445 ¶¶ 41-42. She awarded reimbursement for his summer program at Quest and Dr. Nunno’s assessment. The ALJ found the speech and language and occupational therapy assessments that were conducted in Spring 2005 were inappropriate. 2443 ¶¶ 29, 31-32. She awarded assessments in both areas, which neither party requested. *Id.* She found that some of the communication goals were flawed, but awarded nothing for the error. 2444 ¶ 37. She found that the change in speech and language therapy was inappropriate as part of AB’s fourth grade IEP and awarded 17.5 hours of reimbursement for Ms. Fung’s services. 2445 ¶ 40. She found that in fifth grade the behavioral assessment was inappropriate and untimely and that no psycho-educational assessment was conducted. 2442-42 ¶ 28; 2444 ¶ 34. These errors were determined to be harmless and went without a remedy. She found violations with the ESY offer and Prior Written Notice (“PWN”) yet awarded no remedy as they were deemed harmless. 2446-47 ¶¶ 48-50.

In this motion, AB challenges the findings of harmless error, findings of no error at all, and the invocation of the statute of limitations. These aspects of the ALJ’s decision were not supported by the law or facts. While AB alleged below a denial of FAPE based on AB’s academic program, AB is not challenging that aspect to the ALJ’s decision. AB is requesting that Court find a denial of FAPE in each year – from second through fifth, and reimbursement for all privately paid services.

III. LEGAL ANALYSIS

A. *Standard of Review*

1. **Summary Judgment is the Proper Vehicle for Resolving this Matter**

If a matter is to be tried to the bench, a summary judgment is appropriate if the underlying evidence is undisputed and the record persuades the court that a trial would add nothing to its ability to decide the issue. *Transworld Airlines, Inc. v. American Coupon Exchange, Inc.*, 913 F2d 676, 684 (9th Cir. 1990). In the present action, the parties had an opportunity to try the matter to an independent fact finder. The parties had an opportunity to present any witnesses and evidence that

they desired. As the record on appeal shows, numerous witnesses testified at the underlying hearing and multiple volumes of evidence were presented. No additional evidence is necessary. An actual trial will not add anything to the Court's ability to decide the issues at hand. This matter is properly addressed through this motion for summary judgment.

A summary judgment may be granted if the Court finds that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). Summary judgment may even be granted where there are mixed questions of law and fact. Where the underlying facts are undisputed and the question before the Court is whether the facts meet the statutory standards, summary judgment is appropriate. *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 111 S.Ct. 807, 818 (1991). Summary judgments are also appropriate where the court instead of a jury normally decides the matter. *Prinzi v. Keydrill Co.*, 738 F.2d 707 (5th Cir. 1984).

a. A Modified De Novo Standard of Review Applies to IDEA Claims

Under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400 *et seq.*, the determination of whether a school district offered a FAPE is a mixed question of law and fact, subject to *de novo* review. *Gregory K. v. Longview School Dist.*, 811 F.2d 1307, 1310 (9th Cir. 1987). The Court reviews the state hearing officer's findings of fact for clear error. *Id.* "A finding of fact is deemed clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.*, quoting *Burlington Northern Inc. v. Weyerhaeuser Co.*, 719 F.2d. 304, 307 (9th Cir. 1983).

Under the IDEA, a trial court must receive and fully review the administrative record, hear additional evidence at the request of a party, and grant such relief as the court deems appropriate, based on a preponderance of the evidence. *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982); *Ojai Unified School Dist. v. Jackson*, 4 F.3d 1467 (9th Cir. 1993) *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884 (9th Cir. 1995).

2. **The ALJ Decision is Jumbled, Incomplete, and Often Unsupported**

In this instance, the ALJ failed to demonstrate impartiality by delivering an opinion that, while impressively long, did not consider all of the relevant facts and law. Sprinkled throughout the

Decision's "Findings of Fact" are contentions,⁷ statements of law,⁸ and mixed findings of fact and law, all labeled as "facts."⁹ The Decision includes findings without legal or factual support.¹⁰ This jumbled reasoning results in incomplete and unsupported legal conclusions, making it difficult to follow the reasoning behind many of the ALJ's true findings.

The ALJ's mislabeled "findings of fact" and related conclusions of law warrant no deference from this Court. Rather, given the Administrative Record as a whole, the Court should find that a mistake has been committed and reverse the decision to the extent requested in this Motion. In particular, the ALJ's misapplication of the statute of limitations and her misuse of the harmless error standard warrant reversal because they presume facts and law that do not exist.

3. **Procedural Violations Related to AB's Second Grade IEP do not Fall Outside of the Statute of Limitations**

The ALJ refused to consider alleged procedural violations concerning the 2003-04 school year (second grade), asserting that they fall outside of the applicable statute of limitations. 2444 ¶ 35; 2446 ¶¶ 46, 47. This holding is in error. The ALJ did not cite, and Plaintiff is not aware of, any statute, regulation or case that supports this proposition. 2436-38 ¶¶ 2-11.

AB's request for a due process hearing had to be filed within three years from when he knew or had reason to know the facts underlying his claims. Cal. Educ. Code §56505(l) was recently amended to reduce that to two years.

The ALJ's decision presumes a bright line rule that the date the IEP is signed is automatically the date of discovery for a procedural violation. This is an improper characterization of the statute of limitations. If that were the case, many legitimate claims would be precluded. In AB's case, the ALJ refused to consider whether SFUSD's offer of integrated playgroups and speech and language therapy in the March 2003 IEP violated the clear written offer requirement or whether the annual

⁷ See, e.g., 2389-436 ¶¶ 4-6, 12, 14-18, 22, 23, 25-26, 28-38, 40, 42-43, 45, 48-50.

⁸ See, e.g., 2389-436 ¶¶ 4-7, 64, 85, 87, 94, 163, 164, 167, 178, 188, & 201.

⁹ See, e.g., 2389-436 ¶¶ 34-35, 37-38, 42, & 47.

¹⁰ See, e.g., 2399 ¶ 39 (finding SFUSD's Supervisor translated Dr. Nunno's report when she stated she had only recently reviewed the report) 2446 ¶ 46 (statute of limitations bars certain claims) 2447 ¶ 50 (finding that prior written notice was included in IEPs), 2426 ¶ 168 (finding that Starr King was the 2004 ESY placement).

goals were measurable as written. 2412 ¶¶98; 2426 ¶¶ 165-66. The problem with the ALJ's interpretation of the statute of limitations is that the effect of these violations would not be discovered until reviewing AB's program to determine whether the offered services were provided or whether he met the goals. For example, it is impossible to determine at the time of the IEP whether an offer of an integrated play group when funding or staff are available was provided, because it does not specify what will be provided. The same is true of an offer of speech and language services that includes various possible presentations without an indication of what level of service would actually be provided. 3359. In these situations it would be impossible to enforce the implementation of the offered services.¹¹

An IDEA claim should be timely if it concerns an IEP that is operative within (in this case) three years of the date of filing. In this instance, AB filed his claims on October 6, 2006. The procedural violations related to his second grade year fell within the three year statute of limitations, at least for the period of October 6, 2003 to the end of the year. Therefore, to the extent that there are any procedural flaws with the operative IEP in that time period, his claim is timely.

4. The ALJ Misapplied the Harmless Error Standard

The ALJ correctly acknowledged that not every procedural violation rises to denial of a FAPE. Purely technical violations will not render an IEP invalid. 20 U.S.C. § 1415(f)(3)(E); *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001). However, the pervasive procedural violations that occurred in AB's case are a denial of FAPE. Procedural violations rise to a denial of FAPE under several different scenarios: (a) loss of educational opportunity, (b) seriously infringing on the parents' opportunity to participate in the IEP formulation process, or (c) causing a deprivation of educational benefits. *Id.*

The ALJ found that the bulk of the errors committed by SFUSD were harmless. 2387-448, Findings of Fact ¶¶ 35, 42, 93, 177, 182, 185; Legal Conclusions ¶¶ 26, 28, 34, 48, 49 & 50. The Decision leaves the question unanswered: *how many errors may a district commit before the cumulative effect is a denial of FAPE?* AB lost educational opportunity, his mother's participation

¹¹The propriety of the annual goals and services is discussed in full, *infra* Section F & G.
A.B. v. San Francisco Unified School District, C 07-4738

in the IEP process was infringed upon *and* AB was deprived of untold educational benefits, forcing his mother to seek out extra-curricular opportunities as best she could. The finding that AB did not lose educational opportunity begs the question: *how could the ALJ know if AB lost educational opportunities if appropriate assessments were never completed?*

5. AB's Mother was Denied Meaningful Participation

In *Amanda J.*, the school district was taken to task for failing to provide parents the results of assessments, because it precluded the opportunity for early intervention with Amanda's autism:

This is a situation where District had information in its records, which, it disclosed, would have changed the educational approach used for Amanda, increasing the amount of individualized speech therapy and possibly beginning the D.T.T. program much sooner. This is a particularly troubling violation, where, as here, the parents had no other source of information available to them. *No one will ever know the extent to which this failure to act upon early detection of the possibility of autism has seriously impaired Amanda's ability to fully develop the skills to receive education and to fully participate as a member of the community.*

A FAPE, as required by the IDEA, must be tailored to the unique needs of each individual child. Each child has different needs, different skills, and a different time frame for effective treatment. Autism is a developmental disorder; those affected by autism exhibit significant deficiencies in communication skills, social interaction, and motor control. Early intervention can lead to positive outcomes, particularly when children are placed in highly structured, specialized, and individualized programs. These programs often must address a wide range of skills, ranging from academic to social to functional living skills, depending on the severity of the particular child's condition.

We hold that, by failing to disclose Amanda's full records to her parents once they were requested, in violation of 20 U.S.C. § 1415(b)(1)(A), the District denied Amanda a FAPE. *Amanda J.* at 893-94 (*emphasis added*).

SFUSD is required to ensure that a parent is a meaningful participant in the IEP process. 20 U.S.C. § 1400(c)(5)(B). "Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA. An IEP which addresses the unique needs of the child cannot be developed if those people who are most familiar with the child's needs are not involved or fully informed." *Amanda J.* at 892. Preventing "full and effective parental participation" "driv[es] a stake into the very heart of the [IDEA]" *Id.* at 893 (citations omitted).

Here, AB's mother was denied meaningful participation in several ways.¹² SFUSD failed

¹² "Meaningful participation" arises in two contexts in the IDEA analysis. First, it can be a stand alone violation of the IDEA. *Amanda J.* at 893-94. Meaningful participation is also a prong for finding that the violation was not harmless. *Id.* at 892. The ALJ, without any legal authority or factual support, found that Plaintiff waived the "meaningful participation" argument for his

1 to respond to her numerous requests for services, requests for information about programs,
 2 assessments, goals and objectives.¹³ She made these requests orally and in writing. The record
 3 demonstrates that SFUSD largely ignored AB's mother's written requests. 2781-90; 2830-1; 2836-
 4 60; 2892-3; 3095-129; 3206-26; 3231. SFUSD claims that she was not ignored, and the ALJ agreed,
 5 without any citation to the record. 2428, fn 24. This finding is in error.

6 Consistent with *Amanda J.*, assessments are a critical tool for parents' involvement with the
 7 IEP process. While it is true that, unlike with AB, Amanda J. had not yet been diagnosed with
 8 autism, the scenarios share a similar parental lack of shared information. *Unlike with Amanda J.*,
 9 here the lack of information was more fundamental: SFUSD either shared faulty information or
 10 failed to conduct agreed upon assessment. If it is a denial of FAPE not to share assessment results,
 11 then it is a denial of FAPE to share faulty information *and* not conduct agreed upon assessments.

12 Here, AB's mother requested several assessments that SFUSD never properly conducted.
 13 Contrary to the ALJ's findings, this is not harmless error, it is a *de facto* denial of FAPE. SFUSD's
 14 flawed information negatively impacts AB's mother's ability to participate and limited AB's
 15 educational opportunities by not properly assessing his needs.

16 6. AB Lost Educational Opportunity/Benefits

17 Just as with *Amanda J.*, AB lost the opportunity for early intervention, and no one will know
 18 the extent to which he has been impaired from SFUSD's failures. Failure to assess is a bell that
 19 cannot be unrung. The ALJ construed AB's failure to identify loss of educational
 20 opportunity/benefits as a failure to meet AB's burden to prove a denial of FAPE. That no one will

21 allegation of a separate IDEA violation by not raising it in his Complaint. *See* 2428, fn. 24. A
 22 complaint should include a description of the problems, facts relating to those problems and a
 23 proposed remedy. 20 U.S.C. § 1415 (b). The Complaint does allege facts supporting a
 24 contention that AB's mother was denied full participation in the IEP process. 2710-14. Even if
 25 the ALJ correctly refused to consider AB's stand-alone "meaningful participation" IDEA claim,
 26 to the extent that the Decision relies on harmless error to deny AB relief. The ALJ, in effect,
 27 opened the door to consideration of whether his mother meaningfully participated in the IEP
 28 process. AB is entitled to an opportunity to refute the ALJ's erred finding of harmless error with
 evidence that AB's mother was, in fact, denied a meaningful opportunity to participate in the IEP
 process because of the allegedly harmless errors the ALJ found.

¹³ AB's mother was not passive when it came to her attempts to be involved in the IEP process,
 but that does not mean her participation was meaningful. Time and again AB's mother brought
 important information to SFUSD, only to have it summarily ignored, or attached to an IEP
 without any due consideration. 2781-90, 2853-60, 3099-103.

1 ever know what opportunities were lost, however, is not a failure of AB's parent to meet her burden
2 to *show* a denial of FAPE, it *IS* a denial of FAPE under *Amanda J.*

3 A particularly poignant example of the harm caused by SFUSD's failure to assess is its
4 failure to conduct a proper behavior assessment, described in full in section B *infra*. Behavior
5 assessments are used to develop behavior plans to target inappropriate behaviors by replacing them
6 with appropriate behaviors. Cal. Code Regs. §§5.3001 & 3052. As a result of behavioral
7 assessments, it can be recommended that a student be provided several types of services, including
8 in-class behavioral support, staff training, and home behavioral programs. 2890-91.

9 AB had a history of significant behavior problems at Alamo, yet, he never had an appropriate
10 behavioral assessment. In second grade, AB's mother begged for a behavioral assessment because
11 of AB's daily disruptive behavior. SFUSD did not complete one. Finally, in third grade SFUSD
12 agreed to assess, but only after mother again requested it. 3199

13 When it came time to do the assessment, the administrator could not complete it due to AB's
14 disruptive behavior. 3389. Years later, there is no way to know what a formal behavioral assessment
15 would have found, and what services should have or would have been provided, or AB's resulting
16 progress from those services. An appropriate assessment would have been the baseline for a plan
17 in second or third grade, as well as a guide for the future.

18 The ALJ found that SFUSD's inappropriate assessment of AB's behavior, while a procedural
19 error under the IDEA, was a harmless error. 2409-11. Under *Amanda J.*, however, SFUSD's failure
20 to conduct appropriate behavioral assessments is a denial of FAPE because the window of
21 opportunity to intervene with appropriate programs for an autistic child like AB is so narrow. This
22 loss of educational opportunity and its benefits to AB is immeasurable. A failure to assess is a denial
23 of FAPE, especially for an autistic child.

24 B. *Under the IDEA, a District Must Provide a Free Appropriate Public Education*

25 The United States Supreme Court outlined the level of instruction and services that a school
26 district must provide a student with a disability under the IDEA. *Hendrick Hudson Central School*
27 *District v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982). A student's IEP must be reasonably

1 calculated to provide the student with some educational benefit. *Id.* at 200. In other words, each
2 child is entitled to a Free Appropriate Public Education, or “FAPE.” The Court determines whether
3 the student was offered or received FAPE by reviewing the record for procedural violations and the
4 substantive appropriateness of the offered program, placement and services. If either procedural or
5 substantive violations occurred, then the offer of placement does not qualify as a FAPE.

6 This motion focuses primarily on SFUSD’s procedural violations under the IDEA rising to
7 a denial of FAPE.

8 **1. Procedural Requirements for a FAPE**

9 An IEP must contain (1) a statement of the child’s present levels of educational performance,
10 (2) a statement of measurable annual goals, (3) a statement of the extent to which a child will not
11 participate in a regular classroom with nondisabled children, (4) a statement of the special education
12 and related services to be provided, and (5) a statement of how the child’s progress toward the annual
13 goals will be measured. 20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.347(a); Cal. Educ. Code §
14 54345. A district must make a formal written offer in the IEP that clearly identifies the proposed
15 program. *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9th Cir. 1994). Related services or
16 designated instruction and services (DIS) means transportation and such developmental, corrective
17 and other supportive services as are required to assist a child with a disability to benefit from special
18 education. Cal. Educ. Code § 56464(a); 34 C.F.R. § 300.34(a).

19 Plaintiff alleges that SFUSD denied AB a FAPE by not meeting most, if not all of the above
20 procedural requirements for an IEP. Specifically, in grades two through five, SFUSD failed to
21 include in AB’s IEP (1) appropriate assessment data, thereby failing to provide a statement of AB’s
22 present levels of educational performance, *infra at E*, (2) failed to provide measurable annual goals
23 or a statement of how the child’s progress toward the annual goals will be measured, *infra at F*, (3)
24 failed to provide a clear statement of the special education and related services to be provided, *infra*
25 *at D*, (4) failed to provide appropriate services, *infra at G*, or (5) prior written notice of the refusal
26 to provide services or reimburse, *infra at C*. See Appendix A, attached hereto.

27 //

C. *SFUSD Denied AB a FAPE by Failing to Provide Prior Written Notice for Its Refusals to Initiate Assessments, Changes in Placement, and Make Changes in Response to His Mother's Requests*

SFUSD is required to provide written notice ("PWN") to the parents of the child whenever the local educational agency proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. 20 U.S.C. § 1415(b)(3); Cal. Educ. Code, § 56500.4. PWN must include a description of the action proposed or refused by the district, an explanation, a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the notice and advisement of procedural rights, a description of other options considered by the IEP team and the reason why they were rejected, and a description of the relevant factors.

For the summers of 2004, 2005 & 2006 AB's mother provided written notice of her intention to send AB to Quest and provide other services rather than the vague special day class AB was assigned. In acknowledging that SFUSD had not provided PWN, The ALJ decided none was required because services were either denied the year before or the information was contained within the IEP, and therefore no additional response was required. 2429-30 ¶¶ 180-85.

The ALJ reimbursed AB's mother for Quest in 2004 under another finding, but otherwise refused to reimburse AB's mother for her summer expenses. 2446 ¶ 48. This finding is in error because the prior written notice requirement is statutorily mandated; SFUSD did not meet its notice requirement. If SFUSD's obligation were discretionary, as the ALJ's finding makes it, it would eviscerate the notice requirement. Even if the ESY placement were discussed at the IEP, evidence of written notice of all components is required. 34 C.F.R. §300.503.

The issue addressed by the PWN requirement for the ESY is not the one posed by the ALJ, namely whether the special day class offered by SFUSD to AB was appropriate. 2447. The issue is whether SFUSD provided sufficient notice to AB's mother to *determine* whether the special day class was appropriate, and whether, based upon that information, she needed to incur the cost of the private summer placement to replace an inappropriate placement. SFUSD was required to tell AB's mother that it would not pay for the summer services she contracted for, and to give her the reason

1 why. AB's mother took on the expense of a summer private placement because, without complete
2 information from SFUSD, she could not make a completely informed decision, which under the
3 IDEA she is entitled to. As the mother of an autistic child, she was motivated to make the best
4 decision she could. Missing critical information from SFUSD, the only logical choice to make was
5 a private summer placement, as she could not risk AB losing ground over the summer. The IDEA
6 is designed to prevent parents from having to make these decisions. AB's mother should not
7 shoulder the cost of having made such decisions when she did so because of SFUSD's failures.

8 D. *SFUSD Denied AB a FAPE by Failing to Make a Clear Offer of Placement for*
9 *Services During the Extended School Year (ESY) and not providing Prior Written*
10 *Notice (PWN)*

11 Extended school years (ESY) services must be provided if the IEP team determines, on an
12 individual basis, that the services are necessary for a child to receive FAPE. Cal. Educ. Code §
13 56345(b)(3). ESY services are provided to students who have disabilities that are likely to continue
14 indefinitely or for a prolonged period, and interruption of the student's education programming may
15 cause regression, when coupled with limited recoupment capacity, rendering it impossible or
16 unlikely that the student will attain the level of self-sufficiency and independence that would
17 otherwise be expected in view of the disability. Cal. Code. Regs. § 5.3043.

18 SFUSD is required to make a clear written offer of placement and services *Union*, 15 F.3d
19 at 1526. The purpose of making such an offer is to put the family on notice of what to consider. *Id.*
20 It also assists the parties in understanding the offer if litigation ensues. *Id.*

21 During all years, SFUSD agreed that AB required ESY services. 2843, 3119, 3258. Although
22 the ALJ found that SFUSD's offers were sufficiently clear, the record does not support this finding.
23 For the 2004 ESY placement, the ALJ incorrectly stated that the ESY offer was for a special day
24 class at Starr King. 2426, ¶ 168. The IEP reference to Starr King cannot be in connection with the
25 ESY as the IEP specifically states "[AB] would be mainstreamed for academics." 3124. This was in
26 reference to AB's third grade year as SFUSD was recommending that he enroll in a special day class
27 with mainstreaming for academics. This conclusion is consistent with Priya Sodhi's testimony
28 concerning the IEP team discussion of the Starr King placement. 1265:6- 1268:18. This ambiguity

1 demonstrates that SFUSD failed to make a clear written offer of placement for the 2004 ESY.

2 During the 2005 ESY SFUSD included the location of the school site, specifically Lafayette
3 Elementary School. 2427 ¶171. When questioned, AB's then-current inclusion teacher, Ashley
4 Emling, was unable to provide a single detail about the offer for example, who the teacher would
5 have been or how many students would have been in the class. 1169:7- 1170:23. If his teacher was
6 not able to provide basic details about the class, how is it possible that the offer has sufficient
7 specificity for AB's mother to understand it?

8 For the 2006 ESY, the IEP fails to include a clear statement of the placement. 3258. The
9 only statement of the location of the ESY placement was in a letter sent to AB's mother, after she
10 gave her notice to unilaterally provide him with services. 2900-01, 3195. The ALJ found this a
11 violation, but deemed it harmless. 2427-28, ¶ 174-77; 2446, ¶ 48; 2447, ¶ 50.

12 For the 2004, 2005 & 2006 ESY SFUSD's failed to provide a clear written offer of the
13 particular placement and failed to provide PWN regarding the placement and AB's mother request
14 for services. The ALJ found this combination of errors harmless. 2446-47, ¶ 49-51. The ALJ stated
15 that PWN was not required in 2005 and 2006 as SFUSD had refused to change the ESY in 2004. *Id.*
16 This is flawed reasoning because (1) the same services were not always requested each summer and
17 (2) a student's individual needs must be considered anew each year. The ALJ excused PWN by
18 stating that the information was contained in the relevant IEP and excused the clear written offer by
19 claiming AB's mother understood. A review of the Spring 2004 IEPs [3095-3129] shows that there
20 is no reference to the action refused or proposed by SFUSD, an explanation for the action,
21 alternatives considered, or factors considered in taking the action and that the offer is not sufficiently
22 clear.¹⁴ 20 U.S.C. § 1415 (c)(1).

23 The ALJ's forgiveness of SFUSD's significant procedural violations committed permits
24 SFUSD to benefit from its own failures by not ordering reimbursement for AB's private summer
25 services. The ALJ's finding of no error or harmless error should be reversed.

26
27
28 ¹⁴The same lack of detail is apparent from the 2005 IEP [3270-318] and the 2006 IEP [3246-69].
A.B. v. San Francisco Unified School District, C 07-4738

1 E. *SFUSD Denied AB a FAPE by Failing to Assess AB's Educational Needs*

2 1. **SFUSD is Required to Assess AB in All Areas of Suspected Disability**

3 SFUSD must assess a student in all areas of suspected disability. Cal. Educ. Code §
4 56320(f). No single procedure may be used as the sole criterion for determining whether the student
5 has a disability or an appropriate educational program. 20 U.S.C. § 1414(a)(2)(3); Cal. Educ. Code
6 §56320(e) & (f). A reassessment of a student shall occur if the district determines that the
7 educational or related services needs warrant a reassessment, or if the parents or teacher request a
8 reassessment. Cal. Educ. Code § 56381(a)(1). A reassessment of a student shall occur not more
9 frequently than once per year, unless the parents and the district agree otherwise, and shall occur at
10 least once every three years, unless the parents and the district agree in writing that it is not
11 necessary. Cal. Ed Code § 56381(a)(2). The personnel administering an assessment must be
12 knowledgeable about the assessment tools and the student's disability.

13 The assessment plan must be given to the parent within 15 days of the request or referral for
14 assessment. Cal. Ed Code § 56321(a). The school district has 60 days from receipt of the signed
15 assessment plan within which to complete the assessment and convene an IEP meeting to discuss
16 the assessment results. If a parent disagrees with an assessment, the parent has the right to obtain,
17 at public expense, an independent educational evaluation under certain circumstances. Cal. Educ.
18 Code §56329(b); 34 C.F.R. § 300.502. A parent's involvement with requesting an assessment and
19 developing an appropriate IEP is essential to meeting the goals of the IDEA.

20 In *Amanda J*, the Ninth Circuit found that a school district denied an autistic child FAPE
21 when the parent requested assessments, assessments were performed, and the results were not
22 provided to the parent in violation of the procedural requirements of the IDEA requiring meaningful
23 parental participation. *Amanda J.* at 894. Here, the procedural violation was even more egregious
24 – here proper *assessments were not even performed*. AB's mother was left to seek assessments on
25 her own. As much as AB's mother pushed to have SFUSD conduct these assessments, her requests
26 were largely ignored. As with *Amanda J.*, AB's parent was unable to meaningfully participate in the
27 IEP process, *de facto* denying AB a FAPE. *Id.* ("These procedural violations, which prevented

1 Amanda's parents from learning critical medical information about their child, rendered the
2 accomplishment of the IDEA's goals – and the achievement of a FAPE – impossible.”)

3 **2. SFUSD Failed to Properly Assess AB** ¹⁵

4 As an autistic child, appropriate assessments for AB include: academic performance, social
5 and emotional status, motor abilities, language and communication skills. *Id.*; *see also* 2888-90.

6 a. SFUSD Failed to Conduct a Functional Behavioral Assessment
7 (FBA) as Required

8 An IEP team must assess a student's behavior when either the student's behavior interferes
9 with his or other's learning, or when a district intends to use certain types of discipline with an
10 eligible student. 20 U.S.C. §§ 1414(d)(3)(B)(i), 1415(k)(1)(D) & (F); 34 C.F.R. §§ 300.346(a)(2)(i),
11 300.520(b); Cal. Educ. Code §§ 56341.1(b)(1), 48915.5. A functional behavioral assessment
12 (“FBA”) should occur when the IEP team determines that other instructional or behavioral
13 approaches in the IEP have been ineffective.¹⁶ The FBA should involve District personnel with
14 documented training in behavior analysis. Cal. Code Regs. §§ 5.3001(e)l 3052(a)(1).

15 AB had a baseline behavior services plan (“BSP”) in place from kindergarten to address
16 temper tantrums. 2391 ¶ 8. In second grade, the IEP team created a new BSP to address AB's
17 escalating negative behaviors. 2793-97. AB's mother requested, *inter alia*, an FBA several times
18 between January and April 2004. 2392-93 ¶ 15; 2395 ¶ 25. SFUSD offered another BSP for AB,
19 rather than conducting an FBA. 3325. The ALJ found that SFUSD failed to meet its obligation to
20 do a behavioral assessment in the second grade. 2395-96 ¶ 26.

21 In the third grade, AB continued to be disruptive in class, but not to the same extent he was
22 in second grade. 2396-97 ¶ 32. The March 2005 IEP states that AB no longer manifested

23 ¹⁵ AB also presented claims regarding SFUSD's failure to assess his academic weaknesses.
24 While these claims have merit, for the sake of brevity, AB is reserving this argument for his
25 Reply.

26 ¹⁶ A behavior intervention plan (BIP) should be developed if a student “exhibits a serious
27 behavior problem that significantly interferes with the implementation of the goals and objectives
28 of the student's IEP.” Cal. Code Regs., 5.3001(f). The BIP becomes part of the IEP. A BIP
must contain a summary of the results of a functional analysis assessment or functional
behavioral assessment (FBA), objective and measurable descriptions of the targeted maladaptive
behaviors and the replacement positive behaviors, a schedule for recording the frequency of the
use of the interventions, phasing or fade out criteria, and specific dates for periodic review,
among other information. Cal. Code Regs. §§5.3001(f) & 3052.

maladaptive behaviors to justify an FBA [2397 ¶34] – but it is unclear how this conclusion could be reached since both BSPs identified daily inappropriate behaviors. 3307, 3323. SFUSD agreed at the end of third grade to conduct an FBA. 3199-200.

SFUSD finally attempted to conduct an FBA in October 2005. The ALJ found that this assessment was “untimely, incomplete and inappropriate.” 2411 ¶93. The ALJ found, *inter alia*, that SFUSD did not complete its observations of AB because he was so disruptive in the classroom as to require removal. 2410-11 ¶ 91; 3389. Regardless of the fact that SFUSD could not complete an FBA *because of* AB’s behavior problems, ironically SFUSD maintains that AB’s behavior problems were not bad enough to warrant an assessment.

The ALJ found the entire lack of a behavior assessment as harmless error, except for a portion of second grade, because no loss of educational benefit could be shown. As discussed *supra*, this finding of harmless error is improper under *Amanda J.* It is impossible to know what educational opportunity was lost. SFUSD did not create accurate baseline measurements and as a result could not write proper goals.

b. SFUSD Failed to Conduct Neuropsychological or Psycho-educational Assessments as Required

SFUSD never conducted its own neuropsychological or psycho-educational assessments of AB and ignored the assessment AB’s mother procured on her own. She hired Dr. Nunno to conduct a neuropsychological assessment of AB in part to address her fear that SFUSD intended to place AB in a special day class. 2394 ¶ 21. At the May 18, 2004 IEP team meeting, AB’s mother verbally reported on Dr. Nunno’s assessment, including his recommendation for an inclusion program in a general education classroom because of AB’s cognitive abilities, and a full time aide for AB’s autistic and maladaptive behaviors. *Id.* SFUSD did not implement the bulk of Dr. Nunno’s recommendations. 3434-35.

The Decision states that Dr. Pamela Mills, SFUSD’s Director and Program Administrator “translated Dr. Nunno’s clinical medical evaluation into educational information.” 2398-99 ¶39. This finding is not supported by the record. Dr. Mills testified that she did not recall seeing Dr.

1 Nunno's evaluation prior to preparing for the hearing. 1937:23 -1938:6. SFUSD did not consider
2 Dr. Nunno's evaluation as the basis for any contemporaneous decision-making.

3 On May 6, 2005, AB's mother asked SFUSD to conduct its own neuropsychological
4 assessment. 2399 ¶ 40. At the May 25, 2005 IEP meeting, SFUSD verbally agreed to conduct a
5 psycho-educational assessment. 2399 ¶¶ 40-41. SFUSD has never conducted either a
6 neuropsychological or psycho-educational assessment to date. 2399 ¶ 42.

7 SFUSD's failure to conduct a psycho-educational assessment after agreeing to do so is a
8 procedural violation of the IDEA. The ALJ concluded that this error was harmless because the
9 student did not establish any loss of educational benefit. 2399 ¶ 42. However, considering that
10 SFUSD did not properly consider the one evaluation that was conducted, did not implement the
11 findings of that evaluation, did not offer any counter evaluation as the basis for its decision not to
12 implement the findings of that evaluation, this violation is not harmless. SFUSD and AB's mother
13 had no way to know whether the choice of placement and programs, to the extent it differed from
14 Dr. Nunno's recommendations, were appropriate. Dr. Nunno found that there would be educational
15 benefit to providing daily speech and language therapy and occupational therapy three times per
16 week. 3434-35. SFUSD did not provide them. Based upon Dr. Nunno's assessment, AB lost
17 educational benefit.¹⁷

18 c. SFUSD Failed to Conduct Speech, Language and Social Skills
19 Assessments as Required

20 The ALJ partially agreed with Plaintiff that SFUSD did not properly assess AB's speech,
21 language and social skills throughout the second through fifth grade. The ALJ only ordered that a
22 new assessment be conducted – a "remedy" that does nothing to address prior harm caused by its
23 failure to assess AB's speech and language when required. 2401¶ 47; 2406-07 ¶¶ 72-75 .¹⁸

24 ¹⁷Dr. Guterman's assessment supports a finding that AB lost educational opportunity. 2890

25 ¹⁸ The only assessment the ALJ found flawed was the "triennial review" that included a speech
26 and language assessment in March 2005 (third grade). 2401 ¶ 47. The ALJ found that the
27 assessment was inappropriate because AB's birth date was incorrectly stated on the assessment,
28 calling into question whether the scoring results were wrong. AB's autism was never mentioned
in the report, leading to a material mistake in the evaluation of AB's verbal abilities. 2401¶ 47;
2406-07 ¶¶ 72-75, SFUSD's only speech and language assessment was irreparably flawed
resulting in a reduction in speech services.

Based on SFUSD's failure to assess speech and language, SFUSD decreased the speech and language services offered to AB. AB's mother supplemented speech and language services. AB's mother should be compensated for these expenses, consistent with Dr. Nunno's recommendations.

The ALJ found that the 2005 speech and language assessment was flawed including the pragmatic language portion of it. Pragmatic language are the language skills attached to social skills. As Dr. Guterman's report highlights, social skills and pragmatic language skills are intertwined. 2889. The finding that AB's pragmatic language skills were not properly assessed is inconsistent with a finding that his social skills were properly assessed. 2403-04 ¶¶ 59-63; 2407 ¶ 75.

In addition, the ALJ found that SFUSD was "aware of [AB's] unique needs in the area of social skills and addressed them." 2403 ¶ 61. However, SFUSD could not have known what AB's needs were, let alone address them, without a proper assessment. AB's mother supplemented SFUSD's efforts with private social skills therapy because his deficits are part of his core deficits as a child with autism, which she believed went unaddressed by SFUSD. 2404 ¶ 62.

d. SFUSD Failed to Conduct Occupational Therapy (OT)/Sensory-Motor Skills Assessments as Required

Likewise, the ALJ found that the only OT assessment SFUSD conducted for AB between his second and fifth grades occurred as part of SFUSD's flawed triennial review in March, 2005 (third grade). 2401-02 ¶ 52, 2407-08 ¶¶ 76-80. The problem with the ALJ's decision is, like with the speech and language assessment, instead of awarding reimbursement for the expenses incurred for services AB's mother paid for to supplement SFUSD's programs, the ALJ only ordered a new assessment. 2443 ¶ 29. A new assessment, years after the fact, is no remedy for the harm done at the time. SFUSD may argue that whatever supplemental programs AB's mother spent money on were not necessary. AB's mother was providing services that she could relying on the information she had – namely Dr. Nunno's 2004 evaluation recommending occupational therapy. 3434-35.

e. SFUSD Failed to Conduct Auditory Processing Assessments as Required as Part of AB's Triennial Assessment

SFUSD did not properly assess AB's auditory processing needs as part of his Spring 2005 triennial assessment. SFUSD's assessment found that AB scored significantly below average on the

auditory assessment, showing AB had difficulty processing and retaining verbal information. 2408-08 ¶82. The ALJ found that AB did not present any evidence of changes, incidents or information in AB's auditory processing needs that would put SFUSD on notice that additional assessments were required. 2403 ¶58. The ALJ found that SFUSD's 2005 assessment when paired with Dr. Nunno's 2004 assessment sufficiently assessed this area of need. 2408-09 ¶¶82-84. As shown in Section b, *supra*, SFUSD did not consider Dr. Nunno's assessment contemporaneously in its decision-making, so it was improper to pair his assessment with SFUSD's to make it whole.

Dr. Guterman was critical of the assessment for several reasons. For example, she objected to the lack of discussion in the report about how AB's auditory perceptual skill appeared in his day-to-day functioning within the classroom. She also objected to the lack of discussion about the discrepancy between AB's cognitive abilities and his low scores. 2877-78. The ALJ found Dr. Guterman persuasive in other areas but refused to rely on her for this point.¹⁹ 2407 ¶ 75; 2408 ¶ 79.

SFUSD's 2005 auditory processing assessment of AB, on its own, was insufficient, and pairing it with Dr. Nunno's report after-the-fact cannot save it.

F. *SFUSD Denied AB a FAPE by Failing to Develop Appropriate Goals*

1. **SFUSD is Required to Develop Appropriate Goals Under the IDEA, and could not do So Because It did not Properly Assess AB**

An IEP must contain a statement of measurable *annual* goals and how the child's progress toward the annual goals will be measured. 20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.347(a); Cal. Educ. Code § 56345. *See Kirby v. Cabell Cty Bd. Of Educ.*, 46 Indiv. Disab. Educ. Law. Rptr. 156 (S.D. W.Va 2006) (failure to develop measurable baselines and goals "goes to the heart of the IEP; the child's level of academic achievement and functional performance is the foundation on which the IEP must be built. Without a clear identification of [student's] present levels, the IEP cannot set measurable goals, evaluate the child's progress, and determine which educational and related services are needed."); *Bend-Lapine Sch. District v. K.H.*, 43 Indiv. Disab. Educ. Law. Rptr. 191 (D.C. Ore. 2005).

¹⁹Why the ALJ relied on Dr. Guterman's criticism for some assessments but not others is unclear.

Every year AB was entitled to properly drafted, measurable goals that addressed his changing educational needs. They should have been based on solid baseline assessments, and updated every year. Goals should be written so that any individual knows where the student began and where the team expects the student to be at bench mark periods and at the end of the year. SFUSD's IEPs for AB from second through fifth grade fell far from this mark.

The ALJ found that (1) the second grade goals fell outside of the statute of limitations, and (2) with the exception of the behavioral goals in second grade and the communications goals in fourth grade, all of the goals provided adequate baseline information and were measurable. ¶¶ 35-38. As stated above, the statute of limitations finding was in error. The ALJ's finding of measurable goals does not reflect the actual language of the goals.

2. SFUSD Failed to Develop Appropriate Baselines and Goals for AB in Second through Fifth Grade

Bend-Lapine provides examples of how not to write IEP goals. In *Bend-Lapine*, the child was not autistic, so her IEP was dramatically different than AB's, but the requirements that annual goals be measurable remains the same. The *Bend-Lapine* child's baseline information was similarly vague to AB's:

[H]er behaviors 'resulted in short term suspensions,' K.H. had been physically and verbally aggressive, and K.H. 'had been involved in some sexual harassment incidents.' It was further noted that K.H. had difficulty maintaining friendships, verified by the behavioral inventory, and that people 'don't always enjoy K.H.'s company.' Finally, K.H.'s 'inappropriate behaviors interfere with her success in the classroom both socially and academically.'

Bend-Lapine at 7.

The Court found that this statement was insufficient to determine an accurate baseline of K.H.'s behaviors, and failed to provide any measurable level of problematic behaviors. *Id.*

The flawed goals in *Bend-Lapine* are remarkably similar to those prepared for AB. AB's goals include the following statements:

2003 goals

"understands whole class schedule, not always able to refer to it to stay on task," [3355], "difficulty interacting with peers" [3356], "difficulty w/ sentence structure, grammar, staying on-topic" [3357], and "difficulty understanding appropriate reactions (verbal), attention following rules, and turn-taking skills" [3358]

2004 goals

“using visual schedules” and “successfully using” [3331], “difficulty interacting with peers” [3332], “sometimes communicates with others, exhibits negative behavior” [3333], “difficulty with transitions, attention/focus, and following speech rules” [3334] and “difficulty following complex directions” [3335]

2005 goals

“needs significant adult support and frequent prompting and forced choice to answer the question” [3285], “needs significant adult support to complete any writing task that is not of interest” [3286], “needs significant adult support to complete math word problems” [3287], “tends to chase, tease, make faces at peers and does not feel what other people feel and what they think of him or read social cues in others” [3288], “mild to mod expressive language delay” [3289] and “has difficulty interacting with peers, understanding their [Point of View]” [3290]

2006 goals [arguably the most clearly drafted goals]

“[AB] can write 1 paragraph with minimal assistance” [3253], “[AB] can attend for 5 minutes with adult support” [3255], “[AB] shows confusion with identifying the possible meaning of facial expressions and with use of varying vocal intonation” [3256] and “[AB] needs help with listening to speaker and with taking conversational turns appropriately” [3257]

Like the goals in *Bend-Lapine* these are not measurable. Particularly concerning was that at the hearing “each witness who testified about [Goal 3] had a different interpretation of the goal and the accompanying behavioral expectations.” *Id.* Similar testimony was procured in AB’s hearing as his various full inclusion teachers were unable to identify specific measurements for the goals. 1157:10- 1159:14; 1434:21- 1442:7; 1596:10- 1598:11.

In addition to deficient baselines, SFUSD drafted insufficient goals for AB. Again, *Bend-Lapine* is instructive, providing examples of improper goals strikingly similar to AB’s:

(1) ‘K.H. will exhibit appropriate work ethic and behaviors in school and home settings independently 90% of the time;’ (2) ‘K.H. will use age appropriate social sexual behavior 100% of the time as measured by behavioral referrals and observations;’ and (3) K.H. will apply decision, along and problem solving techniques in school and home settings 90% of the time.’ (sic) *Id.*

The Court found that goals one and three were not measurable and did not comply with the IDEA. *Id.* Again, AB’s goals include statements similar to the flawed ones in *Bend-Lapine*, specifically,

2003 goals

“[AB] will improve expressive language skills towards a more age-appropriate level” [3357], “[AB] will improve social language skills towards a more age-appropriate level” [3358]

2004 goals

“Given outdoor and indoor play opportunities [AB] will use socially and age-appropriate behaviors to interact with peers” [3332], “[AB] will communicate for self-help purposes with peers, teachers, paraprofessionals and other professionals” [3333], “[AB] will improve his behavior during speech/language sessions to help optimize his learning of language-based lessons” [3334], “[AB] will improve his ability to follow complex verbal directives towards a level that will allow him to follow classroom directions more/appropriate accurately” [3335]

2005 goals

“given outdoor and indoor play/social opportunities, [AB] will use socially and age-appropriate behaviors to interact with peers” [3288], “[AB] will improve expressive and Receptive communication” [3289] and “[AB] will identify and describe feelings and then appropriate expression of those feelings in structured play” [3290]

2006 goals

“[AB] will accurately identify and use paralinguistic behaviors for himself with others” [3256], “[AB] will demonstrate appropriate pragmatic skills for interacting with others during conversations” [3257]

Most of these goals include a measurement such as 4 out of 5 opportunities. Given the lack of clarity concerning what will be measured, the mere designation of 4 out of 5 opportunities does not cure the flaw as it did not in *Bend-Lapine*.

The annual goals or short-term objectives contain a significant amount of vague terms, such as “improve,” “age-appropriate,” or “appropriate.” These terms are subjective. What may be considered appropriate for one person is not appropriate for another. The purpose of annual goals is to tailor a program to that particular student’s needs. Without a measurable baseline or annual goals, it is not clear for AB what it means to “improve” or to have “appropriate” behaviors. Consistent with the finding in *Bend-Lapine*, the lack of specific measurable baseline levels and annual goals is a denial of FAPE.

In addition to being impermissibly vague, the goals were not complete or appropriate. AB’s mother suggested several goals, none of which were seriously considered for inclusion in the IEP. For example, often requested further goals to address AB’s social skills, language skills, behavior

2785-90, 3099-100, 3311-12. AB's mom also identified the areas she was mainly concerned about including social skills, behavior and AB's social cognitive issues. 2785, 3099, 3311. SFUSD failed to adequately address these needs in his goals.

From second through fourth grade, AB had a different regular education teacher, full inclusion teacher and speech and language therapist. Having clearly measurable goals that anyone working with AB could implement, without ever having met him before, was essential. As in *Bend-Lapine*, the failure to provide measurable goals is a denial of FAPE.

G. *SFUSD Denied AB a FAPE by Failing to Provide Appropriate Programs*

1. **SFUSD is Required to Provide Appropriate Programs Under the IDEA, and could not do So Because It did not Properly Assess AB or Develop Appropriate Goals for Him**

School districts are required to provide an educational "basic floor of opportunity" that consists of access to specialized instruction and related services individually designed to provide educational benefit to the student. *Rowley*, 458 U.S. at 201. The IEP SFUSD developed had to be reasonably calculated to enable AB to receive educational benefit. *Id.* at 207.

Here, the yearly IEPs were not "reasonably calculated." From second grade on, assessment information was incomplete. The basic information required to set reasonably calculated goals was not there. Therefore, the basic goals required to provide reasonably calculated services were not there. AB does not dispute that SFUSD had no obligation to provide him a perfect program, but the program provided was not reasonable.

2. **SFUSD Failed to Provide Appropriate Programs for AB in Second through Fifth Grade**

The ALJ found that AB did not establish that the services SFUSD provided were not appropriate – in effect asking AB to prove a negative. SFUSD itself is the reason why there is no evidence to prove the appropriateness of its services. SFUSD failed to conduct assessments, creating a dearth of data as to what the proper baselines and goals should be. Without proper baselines and goals, of course AB cannot show what the appropriate programs should have been.

What the parties do know is what services Dr. Nunno and Dr. Guterman recommended for AB. Dr. Nunno's report recommend occupational therapy as part of AB's educational program in

the second grade based upon deficits including poor bilateral coordination and poor balance, lack of coordination and lack of orientation to his “body in space.” 3435. SFUSD did not provide it. Instead, mom provided music therapy and Interactive Metronome therapy. 2865, 2905-08, 2979, 2983. Dr. Nunno recommended daily speech and language therapy. 3435. SFUSD did not clearly articulate its offer of Integrated Playgroups or speech therapy for AB’s second grade and did not provide daily speech therapy thereafter. 3258, 3302, 3336, 3362, 3364. Mom provided Ms. Fung’s services and Ms. Baudry’s services to address these deficiencies. 2861-64, 2976-78, 2982. Had SFUSD considered Dr. Nunno’s report, AB may not have required the supplemental services..

H. *AB’s Mother is Entitled to Reimbursement for the Expenses Incurred for Placements and Services She Procured Because of SFUSD’s Failure to Provide a FAPE to AB*

When a district fails to provide FAPE to a student with a disability, the student is entitled to relief that is “appropriate” in light of the purposes of the IDEA. *School Committee of Burlington v. Department of Educ.* (1996) 471 U.S. 359, 369-71; 20 U.S.C. § 1415(i)(2)(C)(3). Compensatory education is a form of equitable relief that may be granted for the denial of FAPE. *Student W. v. Puyallup Sch. Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496. Compensatory education accrues when the district knows, or should know, that a student is receiving an inappropriate education. *Id.* at 1497.

Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when the school district has failed to provide a FAPE, and the private placement or services were appropriate under the IDEA and replaced services that the district failed to provide. 20 U.S.C. § 1412(a)(10)(C); *Burlington, supra*, 471 U.S. at 369-71. Parents may receive reimbursement for their unilateral placement if the placement met the child’s needs and provided the child with educational benefit. *Florence County Sch. Dist. Four v. Carter* (1993) 510 U.S. 7, 13-14. If the parent removes a child from public school to place the child in a private program, then the parent’s reimbursement may be denied or reduced if the parent did not first give notice of the parent’s intent to remove the child. 20 U.S.C. § 1412(a)(10)(C)(iii); 34 C.F.R. § 300.403(d) (1999); 34 C.F.R. § 300.148(d) (2006); Cal. Educ. Code § 56176. The parent must provide such notice at the most recent IEP meeting that the parents attended prior to removal or by written notice ten business days prior to the removal of the child from public school. *Id.* Relevant here, there is no

1 comparable notice requirement where the student remains in the public school and his parent
2 supplements his program with private services. Here, AB was never removed from his public school
3 program during the school year, and therefore the notice requirement does not apply.

4 As *Amanda J.* illustrates, the ALJ's remedy of choice – new assessments at this late date –
5 does not compensate for SFUSD's early and recurring failure to assess. Autism is a behavioral
6 disorder that requires early and ongoing intervention. Missed assessments and resulting services
7 cannot be made up later by new assessments. While it may be impossible to fully remedy the harm
8 caused to AB by the repeated denials of FAPE, he is seeking the only remedy he can: compensation
9 for the services his mother paid for out of pocket that arose from SFUSD's failure to assess. The
10 ALJ's award of new assessments – something it should be doing anyway – is no remedy at all for
11 its past failures.

12 **1. AB's Mother is Entitled to Reimbursement for Summer Quest Camp**
13 **and other ESY Services**

14 During the 2004, 2005 & 2006 summer months AB's mother unilaterally placed him in a
15 private camp and provided other private services. In those instances no one disputes that she
16 provided the requisite notice. AB's mother requests, and is entitled to, reimbursement for the
17 summer services and the supplemental services.

18 No one disputes that AB required an ESY placement in second through fifth grade. SFUSD
19 offered AB placement in a special day class. SFUSD provided no specificity about the type of class
20 – the educational level of the children in the class, the disabilities the children in the class had, or
21 whether it was an appropriate program for AB. *See supra, D.* AB's mother complied with her notice
22 requirement, and provided notice to SFUSD that she would be sending AB to a different program
23 and would seek reimbursement for Interactive Metronome therapy, music therapy, Lindamood-Bell
24 Learning Processes, speech and language therapy, and Quest Camp. 2824, 3203, 3258. The ALJ
25 acknowledged that SFUSD failed to provide the requisite written notices of refusal in response to
26 AB's mother's notice. 2447.

27 AB benefitted from Quest Camp. 2431-33, 2866-67, 2972-74, 2984-86. He also benefitted
28 from music therapy with Susan Rancer [2865, 3130-31], speech and language therapy with Floria

1 Fung [2863-64, 2987], the Lindamood-Bell Learning Processes services [2958-71], Interactive
 2 Metronome therapy [2905-08, 2988-89], and the social skills program with Dominique Baudry
 3 [2861-62, 3093-94].

4 SFUSD denied AB a FAPE for the 2004, 2005 & 2006 ESY by failing to make a clear
 5 written offer of placement and also failing to provide his mother with the necessary PWN. Therefore,
 6 AB's mother is entitled to reimbursement.

7 **2. AB's Mother is Entitled to Reimbursement for Supplemental Services**
 8 **During the School Year**

9 AB's mother supplemented his educational program throughout the school years because
 10 what SFUSD provided was patently inadequate. Her supplemental program included music therapy,
 11 speech and language therapy, social skills intervention, Interactive Metronome therapy, Quest after
 12 school program and Lindamood-Bell Learning Processes. As shown above, AB benefitted from
 13 these services. These programs were reasonable given the two comprehensive assessments she had
 14 available to her at the time, namely Dr. Nunno's 2004 assessment and Dr. Guterman's 2005
 15 assessment. 2869-91, 3425-35.

16 Given SFUSD's pervasive failure to appropriately assess AB's educational needs, failure to
 17 develop appropriate annual goals, and from there, failure to provide an appropriate program, his
 18 mother should be reimbursed for the supplemental services that provided AB with some benefit.

19 **IV. CONCLUSION**

20 For the foregoing reasons, Plaintiff requests that the Court find that SFUSD denied AB a
 21 FAPE from Second through Fifth grade, and award AB's mother reimbursement for the private
 22 services she contracted for during that period.

23 Respectfully Submitted,

24 ROBERTA S. SAVAGE
 25 Attorney for Plaintiff A.B.

26 Dated: April 16, 2008

27 By:

28 Roberta S. Savage

A.B. v. San Francisco Unified School District, Case No. 07-4738

Appendix A: Table of violations alleged and found

	2003-2004 2 nd grade	2004-2005 3 rd grade	2005-2006 4 th grade	2006-2007 5 th grade
Assessments				
behavior	AWARDED [2442, ¶25]	HARMLESS [2442, ¶26]	HARMLESS [2444, ¶34]	ALLEGED
occupational therapy, including sensory	ALLEGED	ALLEGED	AWARDED [2443, ¶ 29, 32]	AWARDED [2443, ¶29, 32]
speech and language therapy, social skills	ALLEGED	ALLEGED	AWARDED [2443, ¶31]	ALLEGED
auditory processing			ALLEGED	ALLEGED
academic		ALLEGED	ALLEGED	ALLEGED
neuropsychological or psycho-educational	AWARDED [2442 ¶ 25]	HARMLESS [2442-43, ¶ 28]	HARMLESS [2442-43, ¶ 28]	
Annual goals				
all areas or measurable	PARTIAL [2444, ¶35]	ALLEGED	PARTIAL [2444, ¶37]	ALLEGED
Services				
social skills program	ALLEGED	ALLEGED	ALLEGED	ALLEGED
speech and language therapy	ALLEGED		AWARDED [2445, ¶40]	
music therapy	ALLEGED	ALLEGED	ALLEGED	ALLEGED
academic skills		ALLEGED	ALLEGED	ALLEGED
occupational therapy	ALLEGED	ALLEGED	ALLEGED	ALLEGED
1:1 aide/behavioral support	AWARDED [2445, ¶41, 42]			
Separate Violations				
extended school year	ALLEGED	ALLEGED	HARMLESS [2446, ¶48]	
prior written notice	HARMLESS [2446-47, ¶ 49]	HARMLESS [2447, ¶50]	HARMLESS [2447, ¶50]	